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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

BOB BURNS
Commissioner

TOM FORESE
Commissioner

DOUG LITTLE
Commissioner

Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION
OF EPCOR WATER ARIZONA INC. FOR
A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE
WASTEWATER UTILITY SERVICE IN
MARICOPA COUNTY, ARIZONA

DOCKET NO. WS-01303A-15-0018

**EPCOR WATER ARIZONA INC.'S
CLOSING BRIEF**

As directed by the Administrative Law Judge at the close of the hearing on July 22, 2015, EPCOR Water Arizona Inc. ("EWAZ" or "Company") provides the following closing brief addressing the issues in dispute at the hearing.

Argument

As an initial matter, EWAZ notes that there is no dispute that the current Application is in the public interest and should be granted. Staff agrees that (1) EWAZ is a fit and proper wastewater provider, (2) the regional approach set out in the Application is preferable to a series of small, package plants, (3) the regional approach is supported by both the landowners requesting service and the City of Glendale and (4) the Application should be approved. [Transcript of Hearing (7/22/2015) ("Tr.") at p. 192, l. 12—p. 193, l. 2 (B. Gray); p. 123, l. 12—p. 124, l. 14 (J. Liu; from an engineering standpoint, a regional plant is more cost effective and "better for environment"); p. 202, l. 14—p. 203, l. 2 (B. Gray; recognizing that in the present case "a lot of small plants wouldn't be the best way to

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1 go”); see also p. 26, l. 5—p. 27, l. 22 (F. Metzler; explaining that a regional system is best
2 for customers and that the City of Glendale supports the Company’s plans for the area)].
3 The Company also agrees with the vast majority of the recommendations made in Staff’s
4 Revised Report dated July 13, 2015 (the “Report”). The only disputes between Staff and
5 the Company relate to a limited number of recommendations set out in the Report or raised
6 by Staff at the hearing. Per the Hearing Division’s direction, the factual, legal and policy
7 reasons for rejecting those recommendations are set out below.

8 **1. Staff’s Recommended Rates are Unreasonable and Should be Rejected.**

9 Staff’s proposed rates are unreasonable on their face and will adversely impact the
10 regional solution afforded by the proposed Loop 303 Wastewater Service Area. Under
11 Arizona law, the Commission is empowered to set “just and reasonable” rates to be
12 charged by public service corporations. Ariz. Const. Art. 15, Sec. 3. The Company has
13 proposed initial rates (copy attached) that would result in an average monthly residential
14 bill of \$81.34, while Staff’s proposed initial rates would result in an average monthly
15 residential bill of \$133.46.¹ Staff’s proposal requires an average monthly wastewater rate
16 at least \$40 per month higher than any other wastewater rate with which Staff is familiar.
17 [Exhibit S-1 (Staff’s Report), p. 8; Tr. at p. 204, ll. 11—20 (B. Gray; aware of five year
18 phased-in rate of approximately \$90).] Staff’s proposed rates are high and impose an
19 unreasonable burden on customers in the proposed Loop 303 Wastewater Service Area.
20 As a result, Staff’s recommended rates should be rejected.

21 **A. Staff’s Recommended Rates Would Stifle Development and Preclude a**
22 **Regional Solution That is in the Public Interest.**

23 As Mr. Frank Metzler explained, the present Application represents a coordinated
24 and cooperative effort by a diverse group of landowners and developers, the Maricopa
25 County Environmental Services Department (“MCESD”) along with the City of Glendale,

26 ¹ Staff uses its recommended rate of return from the Company’s pending rate case in Docket No. WS-
01303A-14-0010. That rate of return is disputed by EWAZ, and EWAZ objects to its use in this context.

1 the Maricopa Association of Governments (“MAG”), and EWAZ, to provide a regional
2 wastewater solution for a large section of the west valley. [Tr. at p. 24, l. 16—p. 31, l. 3
3 (F. Metzler).] Staff concurs that a regional solution is preferable. [Tr. at p. 123, l. 12—p.
4 124, l. 14 (J. Liu); p. 202, l. 14—p. 203, l. 2 (B. Gray).] Rather than having a series of
5 smaller, package plants providing wastewater service to individual developments, which
6 impose substantial regulatory hurdles and operational and permitting costs on utilities and
7 consumers, the landowners in the Loop 303 area recognized the long-term value of a very
8 early stage regional approach and worked together with Global Water Resources (the
9 original utility party to the agreements assumed by the Company and EWAZ’s predecessor
10 in interest) to create a contractual arrangement that would allow construction of the
11 common infrastructure necessary to support a regional approach in addition to the
12 development specific infrastructure required to provide service. [Tr. at p. 24, l. 16—p. 31,
13 l. 3 (F. Metzler).] The landowners came together before specific development plans were
14 in place and contractually committed themselves to the regional approach. [Id.]

15 The regional approach has been recognized by MCESD and the Arizona
16 Corporation Commission (“Commission”) as the preferred alternative for wastewater
17 service in Maricopa County. See Decision No. 65757 (March 20, 2003) at 10 (finding that
18 “[t]he regional development of water and wastewater service proposed by Applicant and
19 supported by the MCESD during this proceeding establishes that [Arizona-American
20 Water Company’s] approach is reasonable and should be adopted”). However, that
21 approach is only viable if the initial rates adopted by the Commission are conducive to the
22 development of the Loop 303 area. Staff’s initial proposed rates are high and could stifle
23 that development. See, e.g., Docket No. SW-01303A-09-0343 (opposition by ratepayers
24 in Agua Fria wastewater district to rates lower than those proposed by Staff in this docket).
25 If sufficient development does not occur, a regional wastewater treatment solution is not
26 feasible. [Tr. at p. 50, l. 16—p. 51, l. 5 (F. Metzler).]

1 Given that reality, EWAZ proposed that the Loop 303 Wastewater Service Area
2 break even at the end of the fifth year of operations, recovering its projected operating
3 expenses of \$3,056,905. [Exhibit A-3 (Revised Exhibit 14 to the Application).] The
4 Commission has adopted that approach in the recent past. [Tr. at p. 204, ll. 11—20 (B.
5 Gray; in recent Red Rock matter, Commission adopted a five year phased-in rate based on
6 “a breakeven basis”).] EWAZ will, in accordance with Staff’s recommendation, file a rate
7 case seeking a reasonable return on equity following the fifth year of operations, when the
8 Company has actual operating data for the area. At that time, the Commission will set
9 rates based on the Company’s actual operating experience. As even Staff acknowledges,
10 the Company will have over \$5.6 million in rate base under its proposal, an amount
11 sufficient to sustain the rates necessary to operate the system. [See Tr. at p. 150, ll. 1-5 (T.
12 Hunsaker); p. 200, ll. 8-12 (B. Gray).]

13 Even utilizing a break even approach, however, EWAZ’s proposed rates (averaging
14 \$81.34 per month) exceed the rates charged by the Company in any of its other wastewater
15 districts. As Ms. Hubbard testified, the Company’s Agua Fria district has a flat monthly
16 interim wastewater rate of approximately \$71. [Tr. at p. 90, l. 10—p. 91, l. 3 (S.
17 Hubbard).] The wastewater rates in the Company’s other districts are substantially lower.
18 [Id.] Staff’s proposed rates are 64 percent higher than those proposed by the Company.
19 [Tr. at p. 139, ll. 16-24 (T. Hunsaker).] At those rates, development in the area will be
20 curtailed and the proposed regional approach will not be feasible. [Tr. at p. 31, ll. 8-12 (F.
21 Metzler); p. 98, ll. 2—p. 99, l. 14 (S. Hubbard).] The area would then be faced with
22 finding acceptable solutions for wastewater service, which would most likely result in
23 proposals to provide service to the area through multiple smaller, stand-alone package
24 plants, which are typically opposed by MCESD, counter to the MAG 208 amendment for
25 this area and would require a further amendment to the MAG 208 plan. This will certainly
26 result in limited opportunities for wastewater service and development in the area, an

1 outcome that should be avoided by rejecting Staff's proposed rates. [Tr. at p. 50, l.6—p.
2 51, l. 5 (F. Metzler; explaining that MCESD "was very adamant about their preference for
3 a regional wastewater solution rather than package plants").]

4 **B. Staff's Purported Justification for Its Proposed Rates is Not Supported.**

5 Staff attempts to justify its excessive proposed rates on the speculative grounds that
6 such rates will prevent future rate shock by more accurately reflecting the actual cost of
7 service. [See Tr. at p. 207, l. 24—p. 208, l. 11 (B. Gray).] There is no evidence
8 supporting that supposition. [See Tr. at p. 106, ll. 7-23 (S. Hubbard; structure of
9 Wastewater Facilities Main Extension Agreement ("WFA") refund provision would
10 prevent future rate shock).] As Ms. Hubbard explained, absent actual operational
11 experience, there is no way to know with certainty whether there will be any increase or
12 decrease to rates in the future. [See, Tr. at p. 104, ll. 4-15 (S. Hubbard).]

13 Staff's proposal imposes the entirety of Staff's proposed adjustments to rate base on
14 the initial ratepayers. While higher initial rates might conceivably forestall a hypothetical
15 rate shock in the future, a position that is purely speculative at this juncture, such rates
16 come at a steep present cost – the stifling of development. [Tr. at p. 31, ll. 8—12 (F.
17 Metzler); p. 98, ll. 2—9 (S. Hubbard).] To the extent that occurs, consumers will be
18 harmed as a more limited pool of rate payers will be expected to pay a higher cost over the
19 long-term. As Ms. Hubbard explained:

20 The costs would have been incurred to provide service. And
21 that, with a lower customer base, will lead to even higher rates
22 in the future. Whereas, if you establish an initial rate that's
23 more reasonable and consistent with other operating costs and
24 entities, then you can promote the development of that area
25 such that you have a larger customer base over which to spread
26 the costs of a regional facility. And I think that's probably the
important factor to keep in mind, is that you are trying to build
a regional facility. And with that assumption, there is a larger
customer base over which to draw from over time.

1 [Tr. at p. 98, ll. 13—24.] Given the lack of support for Staff's proposed rates and the
2 likely negative impact of those rates on consumers, the Company's proposed rate structure
3 should be adopted.

4 **2. Staff's Recommendation With Respect to Capital Structure Does Not Take**
5 **Into Account EWAZ's Actual Circumstances and Should be Rejected by the**
6 **Commission.**

7 Staff's recommendation that EWAZ be required to increase its paid-in-capital
8 should be rejected. Under the Company's proposal, the common wastewater facilities
9 necessary to provide regional wastewater service to the area will be financed through a
10 combination of funds invested by the Company and landowners/developers. Specifically,
11 the Company will invest approximately \$9 million of its own funds to construct the
12 required infrastructure, [Tr. at p. 94, ll. 12—17], with the landowners/developers
13 contributing the remainder of the substantial initial amounts needed to construct their
14 proposed regional solution. Staff disagrees with that approach, and has recommended that
15 over \$11 million in advances from landowners/developers related to off-site common
16 infrastructure be disallowed. Staff proposes that the Company be required to replace those
17 advanced funds with paid in capital. [Exhibit S-1, Attachment 2, p. 4.] In making that
18 recommendation, Staff treats the proposed new CC&N area as if it were a small, stand-
19 alone company with inadequate resources. Staff ignores EWAZ's actual circumstances
20 and resources and the fact that Staff's recommendation would have no impact on the
21 Company's overall capital structure for ratemaking purposes. Staff's position would
22 unjustifiably require EWAZ to renegotiate or breach existing agreements with landowners
23 in the area and is counter to the fundamental principle that growth should pay for growth.
24 Staff's recommendation, as explained below, should be rejected.

25 As an initial matter, Staff admits that it performed no analysis with respect to the
26 propriety of the Company's proposed capital structure. [Id. at p. 150, l. 16—p. 152, l. 7 (T.
Hunsaker), p. 199, l. 20—p. 200, l. 7 (B. Gray).] Instead, Staff merely compared the

1 proposed capital structure of the Loop 303 Wastewater Service Area, as if it were a stand-
2 alone company unconnected to EWAZ and unable to access EWAZ's resources, against
3 Staff's standard AIAC and CIAC recommendations. [Id.; Tr. at p. 150, l. 16—p. 152, l. 7
4 (T. Hunsaker).] Staff did not perform any further analysis of the issue. [Id.] Staff ignored
5 EWAZ's overall capital structure, its available resources, its ability to access capital and its
6 projected \$9 million investment in the area. [Id.; See also Tr. at p. 94, ll. 1-17 (S.
7 Hubbard).] Under cross examination, Staff admitted that it has no concerns over EWAZ's
8 capacity to operate the proposed system, its ability to replace infrastructure or its ability to
9 access capital, if needed. [Tr. at p. 200, ll. 17—20, p. 201, ll. 2—19 (B. Gray); Tr. at p.
10 140, l. 11—p. 141, l. 22 (T. Hunsaker).] In fact, Mr. Gray noted that "I don't think we
11 [Staff] think the company is going to have operational difficulties based on financial
12 situation." [Tr. at p. 201, ll. 5—7.] As Staff acknowledged, that will not change if the
13 requested CC&N is granted. [Tr. at p. 140, ll. 11—15, p. 141, ll.3—6 (T. Hunsaker;
14 admitting that the Company has sufficient financial capacity to operate new wastewater
15 CC&N).]

16 Despite these admissions, Staff continues to recommend that the Company be
17 required to increase its paid-in-capital to more closely approximate Staff's standard
18 recommendations with respect to Advances in Aid of Construction ("AIAC") and
19 Contributions in Aid of Construction ("CIAC") levels. That recommendation might
20 conceivably make sense for a small developer owned stand-alone system that has no
21 operational history and inadequate financial backing. In that case, low equity and high
22 AIAC or CIAC balances might result in a rate base that is too small to generate operating
23 income sufficient to maintain the system and to attract capital in the future. Staff's
24 recommendation lacks merit in the present case, however, because EWAZ has the ability
25 to attract capital and to maintain its plant facilities as needed to provide safe and reliable
26 service to customers. [Tr. at p. 91, l. 15—. 93, l. 12 (S. Hubbard); Tr. at p. 150, l. 16—p.

1 152, l. 7 (T. Hunsaker).] Moreover, even under the Company's proposal, the Company
2 will be investing approximately \$9 million of its own funds to construct and develop the
3 necessary plant and property. [Tr. at p. 94, ll. 12-17 (S. Hubbard).] As even Staff admits,
4 those funds constitute a significant investment in the CC&N. [Id. at p. 150, ll. 1—15 (T.
5 Hunsaker).]

6 As Ms. Hubbard further explained, the Loop 303 area should not need significant
7 infrastructure replacement for many years. [Id. at p. 103, ll. 6—13 (S. Hubbard).] When it
8 does, the area will have access to EWAZ's resources and ability to access the capital
9 markets. [Tr. at p. 104, l. 24—p. 105, l. 6.] Prior to that need the Company will have filed
10 at least one rate case (following the fifth year of operations) that will establish rates to
11 provide for the recovery of historical operating expenses adjusted for known and
12 measurable cost level changes, such as maintenance. [Id. at p. 96, l. 15—p. 97, l. 2 (S.
13 Hubbard).] Those facts further undercut Staff's position.

14 Tellingly, the impact of Staff's recommendations on the Company's capital
15 structure for ratemaking purposes is insignificant. Under both the Company's and Staff's
16 proposals, the Company's overall capital structure for ratemaking purposes moving
17 forward would consist of -0.15 percent short-term debt, 58.88 percent long-term debt and
18 41.27 percent common equity. [Tr. at p. 142, l. 9—p. 143, l. 5 (T. Hunsaker); Exhibit S-1,
19 Attachment 2, Exhibit TBH-1, p. 3.] Staff's proposal would have no effect on EWAZ's
20 overall capital structure for ratemaking purposes. [Id.] As a result, forcing EWAZ to
21 renegotiate or breach agreements entered into with the landowners requesting service in
22 these circumstances is unwarranted. See Decision No. 74910 (1/22/2015) at 17 (declining
23 to adopt Staff's recommendation that Liberty Utilities alter proposed funding of
24 infrastructure for extension area given parent company's size and access to capital
25 markets). As in the Liberty Utilities' decision, Staff's recommendation with respect to
26

1 EWAZ's capital structure is not appropriate under the present circumstances and should be
2 rejected.

3 **3. Staff's Recommendation to Disallow All Funds Contributed by Landowners/
4 Developers as Advances or Contributions in Aid of Construction for the
Construction of Off-Site Common Infrastructure Must be Rejected.**

5 The Company's predecessor and various landowners entered into the WFAs in
6 order to allow for the construction of a regional wastewater solution. [Tr. at p. 24, l. 16—
7 p. 31, l. 3 (F. Metzler).] The WFAs establish a funding mechanism to offset the substantial
8 costs related to construction of a regional system. [Exhibit A-1, Exhibit 13.] Those
9 agreements further provide a mechanism to allow the developers to recover a portion of
10 those advanced funds and to allow the cost of the plant and property financed with those
11 funds to be rolled into rate base. [Id., ¶ 10.] Staff disagrees with the mechanism chosen
12 by the landowners and utility to finance common infrastructure because (1) the inclusion
13 of those funds in the Company's financials allegedly adversely affects the Company's
14 existing capital structure, and (2) those funds somehow constitute "evidence of
15 indebtedness." [Exhibit S-1, Attachment 2 at 4.] Staff's concerns are unfounded. As
16 detailed above, Staff's concern with the Company's existing capital structure is belied by
17 circumstances, as well as Staff's own testimony and Report. Its remaining concern is also
18 without support.

19 **A. The WFAs Did Not Require Commission Approval.**

20 As an initial matter, Staff's argument that EWAZ or its predecessor was required to
21 obtain Commission approval of the WFAs or other agreements predating the Application is
22 unsupported. Absent specific authorization, not present here, the Commission lacks
23 jurisdiction to construe or interpret a contract or determine whether a contract is unlawful,
24 illegal or void. That power resides with the courts. General Cable Corp. v. Citizens
25 Utilities Co., 21 Ariz. App. 381, 385-86, 555 P.2d 350, 354-55 (1976); Trico Elec. Coop.
26 v. Ralston, 67 Ariz. 358, 365, 196 P.2d 470, 477 (1948); see also Decision No. 74364

1 (2/26/2014) at 22 (Staff recognizing that the contents of an agreement between a utility and
2 developer was outside the Commission's purview). Staff recommends in this case,
3 however, that the Commission effectively invalidate private agreements that did not
4 require Commission approval. Staff has provided no basis for its recommendation.
5 Wastewater main extension agreements do not require any Commission approval, see
6 Decision No. 69671, and Staff has not identified any regulatory or statutory requirements
7 mandating Commission approval of the WFAs. [See, Tr. at p. 156, l. 23—p. 158, l. 19 (T.
8 Hunsaker; unable to identify any rule or regulation requiring Commission approval of
9 WFAs); p. 193, l. 20—p. 199, l. 3 (B. Grey; same); see also A.R.S. § 40-281 (only
10 addressing construction, not financing, of new facilities prior to issuance of CC&N).] The
11 WFAs are consistent with utility practices in Arizona and the business relationship
12 between EWAZ and the landowners reflected in the WFAs should not be altered by the
13 Commission. The funds due under the seventeen WFAs between the landowners
14 requesting service and the Company's predecessor in interest should be treated as AIAC or
15 CIAC as outlined in the Application.

16 **B. The WFAs Are Not Debt.**

17 Based on Staff's testimony, it is unclear whether Staff continues to contend that the
18 WFAs (also referred to as the "Earlier Agreements" by Staff) constitute debt. In response
19 to a question from counsel for Staff, Ms. Hunsaker conceded that those agreements were
20 not "debt." [Tr. at p. 186, ll. 9—16 (T. Hunsaker; Staff was "not classifying those [the
21 WFAs] as, per se, debt").] She further testified that such advances are "deferred credits"
22 and that the Commission has not previously classified the refund of developer advances as
23 "evidence of indebtedness." [Tr. at p. 147, l. 5—p. 148, l. 1 (T. Hunsaker).] In subsequent
24 testimony, however, Ms. Hunsaker attempted to characterize the Earlier Agreements as
25 "debt like." [Id. at p. 186, ll. 17—22 (T. Hunsaker).] Staff, has not demonstrated that
26

1 Arizona law or Commission regulations can or should be read to apply to “debt like”
2 agreements.

3 A.R.S. § 40-302 prohibits public service corporations only from issuing “stocks and
4 stock certificates, bonds, notes and other evidences of indebtedness” without an order from
5 the Commission. That statute does not address and is not applicable to the advance
6 payments from landowners/developers under the WFAs (in place of an off-site hook-up
7 fee). The funds are advance payments made by the developers to fund the common
8 infrastructure necessary to implement a regional wastewater and recycled water solution
9 for the Loop 303 area. The WFAs contain no commitment to repay any funds advanced,
10 except to the extent such funds are eligible for refund pursuant to the terms of future line
11 extension agreements between EWAZ and the landowners/developers (an issued addressed
12 in Section 5 below). The Company will thereby be able to construct plant in service
13 owned by the utility, with development risk appropriately shouldered by the
14 landowners/developers. While Staff attempted to describe those advances as “debt like”,
15 [Tr. at p. 186, ll. 9—22], Staff failed to show that the WFAs constitute evidence of
16 indebtedness or that A.R.S. § 40-302 is applicable to those funds and agreements. See
17 A.A.C. R14-2-602(B)(5)(p) (recognizing debt as separate manner of funding new
18 construction from both AIAC and CIAC).

19 If Staff’s position were to be adopted, every wastewater main extension agreement
20 would require a Commission order pursuant to A.R.S. § 40-302 prior to its execution.
21 Commission regulations (and practice) do not require approval for wastewater main
22 extension agreements. See A.A.C. R14-2-606 (no approval of wastewater collection main
23 extension agreements required); Decision No. 69671 (6/28/2007) at 3 (same). If the
24 Commission adopts such a requirement, all of the wastewater main extension agreements
25 between developers and utilities would immediately be subject to challenge. Such a policy
26 is not in the public interest and should be rejected.

1 **C. Off-Site Advances Should be Treated No Differently Than On-Site**
2 **Advances.**

3 Staff was also unable to explain why the WFAs should be treated as indebtedness,
4 while future advances related to on-site infrastructure pursuant to the form main extension
5 agreements attached to the WFAs, which have the same refund obligations and have
6 previously been approved by the Commission in other dockets, should be recognized as
7 AIAC for ratemaking purposes. While Staff has stated that it “believes that the [on-site
8 line extension agreements] and WFAs would be considered debt”, [Exhibit S-1,
9 Attachment 2, p. 4], Staff concurrently recommended treating \$14,792,974 due to be
10 advanced by developers pursuant to the on-site line extension agreements as AIAC. [Id.]
11 Under cross examination, Staff was unable to elucidate any meaningful difference between
12 the funds advanced by the developers/landowners under the WFAs to facilitate
13 construction of the backbone common infrastructure and the funds to be used to construct
14 the on-site collection mains by individual developers.² [See Tr. at pp. 174, l. 11—p. 177, l.
15 3 (T. Hunsaker; only difference identified is that the on-site development agreements will
16 be entered into after the CC&N has been granted and the WFAs were executed before that
17 time).]

18 In the first instance, the developers and landowners are advancing funds to the
19 Company to allow it to construct the wastewater treatment plant and trunk lines necessary
20 to provide wastewater service to developments located throughout the proposed CC&N.
21 That common infrastructure will be constructed and owned by the Company using, in part,
22 funds advanced by the developers. Each developer will contribute proportionally for
23 construction of the necessary common infrastructure, which will be utilized by all of the
24 developments located within the CC&N. Those advances are subject to the refund terms

25 ² Staff also expressed concern about the operational assistance fee found in the WFAs. That fee is not a
26 rate, as it is not paid by utility customers for service. The assistance fee is a contractual allocation of risk
between the parties to the WFAs that offsets foreseeable start-up losses and enables the Company to
operate the wastewater treatment system in the area while development takes place.

1 found in the future main extension template that will be used with respect to the
2 construction of on-site collection mains and infrastructure. The on-site infrastructure,
3 which benefits only the specific development in which it is constructed, will be paid for by
4 the developers before being deeded to the Company. The developers will pay the entire
5 cost of the infrastructure for their own subdivision, subject to the refund provisions of the
6 future main extension agreements. Staff does not recommend that those on-site funds,
7 which are not materially different than the funds required to be advanced under the WFAs,
8 be treated as debt, because such advances are not debt. There is no meaningful reason that
9 Staff's position with respect to the on-site funds should not be adopted with respect to
10 funds advanced pursuant to the WFAs.

11 **4. There is No Basis in Law or Fact for Refunding Any Funds Collected Pursuant**
12 **to the Existing Agreements.**

13 In addition to Staff recommending that the funds received from landowners
14 pursuant to the WFAs not be treated as AIAC or CIAC, Staff also recommends that such
15 funds be refunded to the landowners/developers. Staff offers no basis for this
16 recommendation. [Exhibit S-1, Attachment 2 at p. 5.] Such funds are not "debt". See
17 supra. at 10-12. Even if they were, there is no statute or regulation that permits the
18 Commission to order such funds be refunded. Under the plain terms of the WFAs, the
19 landowners agreed to pay EWAZ's predecessor in interest fixed advances upon the
20 occurrence of certain events, including obtaining the requested wastewater CC&N. Those
21 funds are crucial to the development and construction of the common regional
22 infrastructure and wastewater treatment plant. Accordingly, Staff's recommendation with
23 respect to such funds must be rejected.³

24 ³ Even if Staff's recommendation is adopted, which it should not be, EWAZ has only received a few
25 thousand dollars from the landowners under the WFAs. [Tr. at p. 70, ll. 10—15 (F. Metzler).] The
26 remainder of the funds deposited to date, were provided to the Company's predecessor in interest to
compensate it for planning, engineering and design work that it completed prior to EWAZ's involvement in
the project. Any order refunding those sums would require separate notice to the Company's predecessor
and an opportunity to be heard on the issue.

1 **5. The Proposed Refunds Comport With the Commission's Previous Approach to**
2 **A.A.C. R14-2-606.**

3 **A. The Refund Provision of R14-2-606 Does Not Apply to the WFAs.**

4 R14-2-606 applies only to "collection main extensions." Collection mains are
5 defined as a "sewer main of the utility from which service collection lines are extended to
6 customers." A.A.C. R14-2-601(7). The WFAs provide the mechanism to fund the
7 common backbone infrastructure, such as the wastewater treatment plant and off-site trunk
8 lines, necessary to provide wastewater treatment to the proposed certificated area. That
9 infrastructure is not connected to service lines providing wastewater service to individual
10 customers. [*Id.* at p. 124, l. 17—p. 125, l. 6 (J. Liu).] As a result, the WFAs are not
11 subject to the refund requirements contained in R14-2-606(C). Indeed, the Commission
12 has previously recognized these types of backbone infrastructure agreements without
13 requiring prior Commission approval. See Decision Nos. 67105 (July 9, 2004)
14 (recognizing pre-application agreement that required developer to pay Project Facilities
15 fees for construction of off-site infrastructure); 65757 (March 20, 2003) (similar); see also
16 Decision No. 64746 (April 17, 2002) (expressly approving existing wastewater extension
17 agreement for common infrastructure that contained a single payment refund obligation
18 triggered by individual service connections). As in the case of those earlier Decisions, the
19 Commission should allow the negotiated provisions of the WFAs to stand.

20 **B. A Waiver of the Requirements of R14-2-606(C) Should be Approved**
21 **With Respect to The Refund Provisions of the Collection Main**
22 **Extension Agreements Attached to the WFAs.**

23 A form of future collection main extension agreement is attached to the WFAs as
24 Exhibit E. [Exhibit A-1, Exhibit 13, Exhibit E.] That form agreement contains refund
25 terms that differ from those set out in R14-2-606(C). Specifically, the form of line
26 extension agreement agreed to between the Loop 303 landowners and the Company's
 predecessor in interest requires the Company to refund 2.5 percent of gross revenues

1 received by EWAZ from the provision of sewer utility service to each customer within the
2 applicable development for a period of 22 years starting the fourth year after the applicable
3 development specific infrastructure is conveyed to EWAZ. [*Id.*, para. 8.] The refunds are
4 capped at the total amount of developer advances under the development specific
5 extension agreement and the advances attributable to the development under the applicable
6 WFA. R14-2-606(C)(5) limits refunds of advances to a term of five years. Staff's Report
7 assumes that the future line extension agreements will be refunded at a level of ten percent
8 of revenues received from customers over a period of five years apparently starting with
9 the first service connection. [Exhibit S-1, Attachment 2, TBH-2, p. 1, n. 7-8.]

10 Implementation of Staff's refund recommendation would require the Company to
11 successfully renegotiate each of the 17 WFAs with the Loop 303 landowners or breach the
12 WFAs. If Staff's recommendation is adopted, the terms of the WFAs would be materially
13 altered, which would adversely impact the regional wastewater solution in the area. Staff's
14 recommendation would also likely result in less rate base, long-term, than the Company's
15 proposal, as a smaller amount of advanced funds would likely be refunded and rolled into
16 rate base. [Tr. at p. 158, l. 23—p. 164, l. 1 (T. Hunsaker admitting that Staff's proposal
17 would result in less long-term rate base).] Given Staff's stated concern with future rate
18 base, Staff's refund recommendation is counterproductive and should be rejected.

19 Furthermore, the Commission has repeatedly approved (and Staff has not objected to)
20 extension agreements with the exact terms found in the form of extension agreement
21 attached to the WFAs.⁴ See Decision Nos. 64746, *supra.*; 67830 (5/5/2005) at 5
22 (wastewater main extension agreements that obligated utility to refund 2.5 percent of gross
23 annual revenue to developer starting four years after facilities are accepted for 22 years
24

25 ⁴ At hearing, Staff raised the issue of the administrative fee included in the on-site main extension
26 agreement template for the first time. The agreements previously approved by the Commission, like the
forms at issue, also contained the administrative fee that Staff objected to at hearing. Nothing in A.A.C.
R14-2-606 prohibits a non-refundable fee to offset a utility's administrative costs incurred as part of the
main extension process.

1 “exceed the minimum refund standards required in the Commission’s rules [and] are
2 acceptable to Staff”); 67240 (9/23/2004) (same); 66394 (10161/2003) (same).

3 In the present case, the refund provisions of the line extension agreement were part
4 of the negotiated regional approach to wastewater treatment. To the extent necessary,
5 EWAZ requests that the Commission approve the terms of the proposed line extension
6 agreements pursuant to R14-2-610(F) as it has done in other situations. Given that the
7 terms of the proposed line extension agreements were negotiated at arm’s length between
8 willing, unrelated parties, are an integral part of the negotiated regional solution and would
9 mitigate Staff’s concerns with respect to future rate base, Staff’s recommendation that all
10 refunds should comply with the terms of R14-2-606(C) should be rejected and the terms of
11 the form agreement approved.

12 **6. The MAG 208 Amendment Process Supports the Application.**

13 Section 208 of the federal Clean Water Act, 33 U.S.C. § 1288, requires regional
14 water quality management planning. MAG has been designated as the regional planning
15 agency for Maricopa County. MAG has established a regional water quality management
16 plan (the “MAG 208 plan”) that, among other things, identifies wastewater treatment needs
17 of the region over a 20-year period. See
18 www.azdeq.gov/environ/water/watershed/regional.html (as of 8/25/2015). Under Section
19 208, MAG reviews proposed infrastructure projects to assure “they are consistent with the
20 certified regional water quality management plan....” Id. Without MAG approval, a
21 wastewater treatment facility cannot proceed. A.A.C. R18-5-303 (requiring section 208
22 approval before construction of new wastewater facility).

23 As all parties to this proceeding acknowledge, a regional wastewater treatment
24 approach is more efficient, better for consumers and better for the environment. See supra.
25 at 1—2. Staff is now apparently concerned, however, that the City of Glendale’s regional
26 approach to the MAG 208 amendment process could exclude other potential wastewater

1 providers from the MAG 208 boundaries and encourage other utilities to pursue regional
2 wastewater solutions through cooperation with landowners and municipalities. [Tr. at p.
3 203, ll. 11—22 (B. Gray).] Staff's concern merely highlights the competing regulatory
4 requirements that utilities like the Company face. MAG, MCESD and the U.S.
5 Environmental Protection Agency (as well as the Commission) prefer regional wastewater
6 treatment facilities and solutions. [See Tr. at p. 50, l. 16—p. 51, l. 5 (F. Metzler;
7 explaining MCESD is "adamant" about regional solution).] To obtain the approvals of
8 those agencies, the Company worked cooperatively with the City of Glendale, the
9 municipal sponsor of the required MAG 208 amendment, as well as affected landowners to
10 provide a regional solution allowing for future development while best meeting
11 environmental and other agency concerns. [Tr. at p. 27, ll. 4—22 (F. Metzler).] That work
12 resulted in a MAG 208 amendment that recognizes the superiority of a regional approach
13 to wastewater treatment in this area.


14 The Commission has over the last several years, however, generally refused to grant
15 CC&Ns for lands where the landowner has not requested service. That policy is at odds
16 with the regional wastewater approach required by the Clean Water Act. The Company,
17 absent the Commission's policy, would likely have sought a CC&N coextensive with the
18 MAG 208 boundaries approved by the U.S. EPA. While Staff has indicated a general
19 unease with the differences attributable to these differing regulatory priorities and
20 processes, it has not made any recommendation to address the issue. Staff's general
21 concern, if addressed, would foreclose a regional approach to wastewater treatment in the
22 Loop 303 area, a result that would not be in the public interest. [Tr. at p. 202, l. 14—p.
23 203, l. 2 (B. Gray).] As a result, Staff's concern with the City of Glendale's regional
24 approach to the MAG 208 process should not play a role in the present proceeding and the
25 CC&N should be granted as requested in the Application.

26

At the direction of the Hearing Division, EWAZ discussed the legal description and acreage discrepancies with Staff. Staff has calculated that 4,717 acres have requested wastewater service and should be included in the CC&N area based on the legal descriptions included in the Staff Report. EWAZ understands that Staff will submit this figure as part of its closing brief and has no objection to Staff's calculation.

Because EPCOR Water Arizona Inc. is a fit and proper service provider and the Application is in the public interest, EWAZ respectfully requests that Staff's recommendations discussed above be rejected and the Application, with its associated initial rates, be granted without corresponding conditions.

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Copy of the foregoing hand-delivered
this 26th day of August, 2015, to:

Thomas Broderick
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REVISED EXHIBIT 7 – PROPOSED TARIFF

Revised Exhibit 7 - Proposed Tariff

| | Monthly Minimum Charge | Commodity Rates (per 1,000 gallons) | Maximum Gallons at Commodity Rates |
|-------------------------------------|------------------------|-------------------------------------|------------------------------------|
| Residential Units | \$ 60.00 | \$ 4.19 | 7,000 |
| Commercial Unit 5/8-inch | \$ 60.00 | \$ 4.19 | 10,000 |
| Commercial Unit 3/4-inch | \$ 95.73 | \$ 4.19 | 10,000 |
| Commercial/Industrial Unit 1-inch | \$ 150.00 | \$ 4.19 | 10,000 |
| Commercial/Industrial Unit 1.5-inch | \$ 299.99 | \$ 4.19 | Infinite |
| Commercial/Industrial Unit 2-inch | \$ 480.00 | \$ 4.19 | Infinite |
| Commercial/Industrial Unit 3-inch | \$ 959.97 | \$ 4.19 | Infinite |
| Commercial/Industrial Unit 4-inch | \$ 1,499.96 | \$ 4.19 | Infinite |
| Commercial/Industrial Unit 6-inch | \$ 3,000.00 | \$ 4.19 | Infinite |
| Commercial/Industrial Unit 8-inch | \$ 4,800.00 | \$ 4.19 | Infinite |
| Schools 2-Inch Meter | \$ 480.00 | \$ 4.19 | Infinite |

EPCOR Water Arizona
Docket No. WS-01303A-15-0018
Proposed Other Service Charges

| Exhibit 7 - Other Service Charges | | |
|--|---------------|----------|
| Establishment and/or reconnection of Service | Regular Hours | \$ 35.00 |
| Reconnection of Service (delinquent) | Regular Hours | \$ 35.00 |
| Re-establishment (Within 12 Months) | | ** |
| Deposit | | * |
| Deposit Interest | | * |
| NSF Check Charge | | \$ 25.00 |
| Late Fee Charge | | 1.50% |
| Deferred Payment Finance Charge | | 1.50% |
| After Hours ¹ | | \$ 30.00 |

- ¹ Applies to all services provided after hours and at the customer's request.
* Per Commission rule A.A.C. R-14-2-603.B.
** Number of Months off system multiplied by the monthly minimum per Commission rule A.A.C. R14-2-603.D.

SERVICE LINE CONNECTION CHARGES
(NON-REFUNDABLE)

| | |
|-------------------|------|
| Residential | Cost |
| Commercial | Cost |
| School | Cost |
| Multiple Dwelling | Cost |
| Mobile Home Park | Cost |
| Effluent | Cost |